

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

INLAND RANCH and)	
WESTERN RANCH,)	
)	
Employer,)	Case Nos. 78-RC-4-M
)	78-CE-23-M
and)	
)	
)	
INDEPENDENT UNION OF)	5 ALRB No. 42
AGRICULTURAL WORKERS,)	
)	
Petitioner,)	
)	
and)	
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Intervenor.)	
)	
)	

DECISION AND CERTIFICATION OF
REPRESENTATIVE

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Following a Petition for Certification filed on March 7, 1978, by the Independent Union of Agricultural Workers (IUAW) and a Petition for Intervention filed on March 10, 1978, by the United Farm Workers of America, AFL-CIO (UFW), a representation election was conducted on March 14, 1978, among the agricultural employees Of Inland Ranch and Western Ranch, the Employer herein. The official tally of ballots showed 43 votes for the IUAW, 16 votes for the UFW, and 1 challenged ballot.

After, the election, the UFW timely filed post-election

objections. The Board's Executive Secretary dismissed six of the said objections and, on May 25, 1978, issued a Notice of Hearing as to the remaining seven objections. On August 3, 1978, the Executive Secretary consolidated for hearing the seven objections and an unfair labor practice complaint against the Employer. The complaint case was subsequently settled at the hearing before Administrative Law Officer (ALO) Arie Schoorl.

On January 25, 1979, the ALO issued the attached Decision in this matter. The DFW timely filed exceptions to the ALO's Decision and a brief in support of its exceptions. The IUAW and the Employer each filed a reply brief.

The Board has considered the attached ALO Decision in light of the record, the exceptions, and the briefs, and has decided to affirm the rulings, findings, and conclusions of the ALO and to adopt his recommendations to dismiss the UFW's objections and to certify the IUAW as the exclusive collective bargaining representative of the Employer's agricultural employees. Accordingly, the objections are hereby dismissed and certification is granted.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes have been cast for the Independent Union of Agricultural Workers and that, pursuant to Labor Code Section 1156, the said labor organization is the exclusive representative of all the agricultural employees of Inland Ranch and Western Ranch for the purposes of collective bargaining as defined in Labor Code Section
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1155.2(a), concerning employees' wages, working hours, and other terms and conditions of employment.

Dated: May 29, 1979

GERALD A. BROWN, Chairman

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Inland Ranch and Western Ranch (UFW)

5 ALRB No. 42

Case No. 78-RC-4-M

ALO DECISION

After an election won by the IUAW a hearing was held on seven objections to the election filed by the United Farm Workers of America, AFL-CIO (UFW), intervenor in the election. The ALO found; no probative evidence that allegedly discriminatory discharges of five employees in May 1977, had any effect on the election results; that an allegedly discriminatory pattern in hiring, and two anti-UFW statements by the Employer, did not amount to conduct sufficient to set the election aside; that there was insufficient evidence for a finding that the Employer engaged in surveillance, or gave the impression of surveillance, of employees; and that no evidence was presented to establish any Employer domination, support, assistance or interference with the IUAW. The ALO also found that the IUAW met the statutory definition of a labor organization in Section 1140.4(f) of the Act, and that the effects of certain questionable conduct by the Employer in 1977 were remote in time from the election and were remedied by the posting in July 1977, of Notices to Employees, pursuant to a Board Settlement Agreement. The ALO recommended dismissal of all the UFW's election objections and certification of the IUAW as the exclusive bargaining agent of all the Employer's agricultural employees.

BOARD DECISION

The Board affirmed the ALO's Decision and Recommendation to certify the IUAW.

Objections dismissed. Election upheld. Certification granted.

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

Case No. 78-RC-4-M

A Petition for Certification (Bd. Ex. 1-A) was filed on March 7, 1978, by the Independent Union of Agricultural Workers (hereinafter IUAW). A Petition for Intervention was filed on

March 10, 1978, by the United Farm Workers of America, AFL-CIO (hereinafter UFW). An election was held on March 14, 1978, among all the agricultural employees of the employer. The results were: IUAW - 43 votes, UFW - 16 votes, No-Union - No votes, and one unresolved challenged ballot. Thereafter, the UFW filed a timely petition pursuant to Labor Code Section 1156.3 (c) objecting to conduct affecting the results of the election.

A Notice of Hearing was issued on May 25, 1978, dismissing six objections and setting for hearing the following seven objections:

1. In May, 1977, the Employer selectively discharged UFW supporters, in an effort to insulate itself from UFW organizing. Employees so discharged included Ignacio Lopez, Raul Valle, Ramiro Lopez, Carlos Andrade and Carlos Chavez.

2. In both 1977 and 1978, the Employer discriminated against UFW supporters and persons associated with supporters in the hiring of employees.

3. In early 1978, the Employer's supervisor Antonio Regalado told an employee that the company would hire only persons who were not UFW supporters.

4. In both 1977 and 1978, the Employer engaged in surveillance of the union activities of employees, and created the impression of surveillance by indicating to employees that it was aware of their union activities.

5. On March 14, 1978, the Employer's supervisor Antonio Regalado interrogated an employee, in an effort to discover which employees were responsible for an unfair labor practice

charge filed against the Employer.

6. In 1978, the Employer dominated, supported, assisted and interfered with a purported labor organization, the IUAW.

7. The IUAW unlawfully affected the conduct and the results of the election by petitioning for certification and participating in the election, purportedly as a labor organization, while in fact representing the "no-union" option and being dominated, supported, assisted and interfered with by the Employer.

All parties were represented at the hearing and were given full opportunity to participate in the proceedings. Post-hearing briefs were submitted by the Petitioner and the Intervenor. In lieu of a post-hearing brief, the Employer submitted a letter in which it stated that it chose to rely on the record in the instant case rather than submitting a brief and specifically requested a finding that the Employer did not engage in any practices during the election which were violative of the law. It added in the letter that its position has been of neutrality in respect to the jurisdictional dispute between the Petitioner and the Intervenor. Upon the entire record, including my observations of the demeanor of the witnesses and consideration of the briefs submitted by the parties, I make the following findings of fact and conclusions of law.

I. JURISDICTION

None of the parties challenged the Board's jurisdiction in this matter. Accordingly, I find the employer is an agricultural employer within the meaning of California Labor Code Section 1140.4 (c), and that the UFW is a labor organization within the

meaning of California Labor Code Section 1140.4 (f}, and that a representation election was conducted within the meaning of California Labor Code Section 1156.3.

II. DISCUSSION

A. Background Information

Employer raises artichokes on four ranch locations in the Watsonville area. Western Ranch and Inland Ranch are separate partnerships but they are considered a single employer under the Act.^{1/} Louis Delfino Sr. is a partner in each of the two entities, his son Louis Delfino Jr. is the general supervisor of the four ranch locations and hires all employees.

B. Alleged Discriminatory Discharge of Employees

The Intervenor contends that in May 1977, the Employer selectively discharged 5 UFW supporters in an effort to insulate itself from UFW supporters, and the effects of these discharges later adversely affected the election results in March 1978. The UFW filed charges with the ALRB with respect to the discharges and the five dischargees were reinstated to their former employment pursuant to an ALRB settlement agreement in July 1977.

The UFW argues that the remedies provided for in the settlement agreement did not nullify the effects of the Employer's previous misconduct. As part of the settlement agreement, Notices

1/ Elections held in 1975 at Louis Delfino, Inland Ranch, Western Ranch and United Ranch were set aside by the Board on January 18, 1977. The Board determined in its decision that the four firms constituted a single unit. See Louis Delfino Co., 3 ALRB No. 2 (1977). Subsequently, the partners, owners of these firms, converted Louis Delfino Co. into a commercial packing shed and terminated the United Ranch operators. Therefore Inland Ranch and Western Ranch were left as the remaining agricultural operations and considered as a single employer by the ALRB.

to Employees were posted in July 1977 at various places on the Employer's property. The notices contained language to the effect that the Employer would recall the five discharges to work, reimburse each one a certain sum of money, and that the Employer had agreed not to discriminate against employees because of their support of the UFW or any other union, not to interfere with or observe conversations about unions between DFW organizers and employees, and to permit UFW organizers to speak with employees during work time every day, as long as they did not interfere with work. The UFW contends that numerous employees testified at the hearing that they had never read the notices and did not understand the purpose of the notices and thus the deleterious effects of the Employer's misconduct had not ended.

The actual number of employees who testified as to ignorance of the notices were two, Luis Palomino and Raul Garcia. The three other employees who testified on this point said they had read the notices posted on the Employer's property and understood their contents. Thus there is insufficient evidence to sustain the UFW's claim that the notices did not serve to remedy the effects of the Employer's discriminatory discharge of the five employees. Since the Intervenor failed to provide any probative evidence to show that the discharge of the five employees had any effect on the election results, I recommend that Objection No. 1 be dismissed.

C. Alleged Discrimination in Hiring

The UFW contends that in 1977 and 1978 the Employer discriminated against UFW supporters and persons associated

with supporters in hiring of employees. The UFW further contends that the Employer made statements that it would hire only persons who were not UPW supporters. According to the DFW, the overall effect of this conduct by the Employer was to create an atmosphere of fear and intimidation and thus the election should be set aside,

Felix Castro, an employee, testified that in December 1977 or January 1978 he asked Louis Delfino Sr. for a job for his brother Santos. Delfino told him to go to Chavez and that he (Chavez) would take care of him and that he (Delfino) knew that he (Castro) was a captain of the workers there. Castro later admitted on cross-examination that a few days afterwards Delfino gave his brother Santos a job.

Bartolo Evangelista, an employee, testified that in January or February 1977 he had asked Louis Delfino Sr. for work for his brother and Delfino told him to wait until there was more work in order to give his brother a job. Evangelista further testified that in February he talked to Louis Delfino Jr. about rehiring his uncle and Delfino told him that there was no work at the time and to wait until later on. Neither the brother or the uncle were thereafter given employment.

The UFW claims that Castro and Evangelista were UFW supporters and thus their relatives, brothers and uncle, were "persons associated with UFW supporters". The record shows that both Castro and Evangelista were UFW supporters and known as such by the Employer. Louis Delfino Sr. indicated by his conversation with Castro that he considered him a UFW adherent by referring him to Chavez for a job for his brother and adding he knew he was a leader (captain) of the UFW farmworker supporters.

Evangelista testified that he had passed out UFW authorization cards to his fellow crew members and wore a UFW button in his cap in full view of the foremen.^{2/}

However, the UFW has failed to prove that the Employer was guilty of discriminatory conduct by its failure to hire or rehire Castro's and Evangelista's relatives.^{3/} There was no evidence that there were any openings for which the brother or the uncle were qualified. In fact, there was uncontroverted testimony that no one was hired in 1978 before the election in March. As the UFW has failed to show any discriminatory action by the Employer in the abovementioned incidents, I recommend that Objection 2 regarding discriminatory refusals to hire or rehire be dismissed.

In February 1978, Foreman Antonio Regalado told Evangelista that he was very angry with Louis Delfino Sr. because the latter had told him to bring some workers from Mexicali so the Employer could hire them and they would be on the Employer's side. However, Delfino never hired them.^{4/}

The UFW contends that by these two statements i.e. Louis

2/ Castro and Evangelista both testified in a straightforward manner and remembered well all the detail of the incidents. Louis Delfino Sr. denied in general making any statements about discriminatory treatment in the hiring of employees. I credit Castro's and Evangelista's accounts of these incidents over the general denial by Louis Delfino Sr. Louis Delfino Jr. was called to the stand but did not testify about these incidents or make a general denial, so Evangelista's account of the incident concerning his uncle stands uncontroverted.

3/ The UFW claimed that Delfino delayed in giving Castro's brother a job for discriminatory reasons but offered no proof on this point,

4/ Foreman Regalado was not called as a witness, so Evangelista's account of his statements regarding this incident stand uncontroverted.

Delfino Sr.'s comments regarding Chavez providing work for Castro's brother and Regalado's comment regarding the Mexicali workers, the Employer unlawfully affected the results of the election by creating an atmosphere of fear and intimidation.

I find that any harmful effect these two statements might have had on the employees was nullified by the Employer's subsequent conduct, i.e., by hiring Castro's brother and by not hiring the employees from Mexicali. Furthermore, during the election campaign the Employer permitted the UFW organizers continual access to the employees on its premises, which would reasonably have the effect of dissipating any lasting effects of these two statements. Accordingly, I find these statements by the Employer amount to de minimis conduct, insufficient to warrant setting aside the election. Accordingly, I recommend that Objection 3 regarding statements of the Employer regarding discrimination be dismissed.

D. Alleged Unlawful Surveillance and Interrogation

Objection 4 alleges surveillance and creating impression of surveillance by the Employer in 1977 and Objection 5 concerns an alleged interrogation of an employee by a supervisor with respect to which employees were responsible for the filing of an unfair labor practice charge against the Employer. However no evidence was presented at the hearing with respect to actual surveillance or interrogation concerning the filing of a charge.

As to giving the impression of surveillance, there was testimony from employee Ignacio Lopez that a supervisor asked him whether he and other employees were to continue organizing for the Union. Although it might be arguably be inferred from the

supervisor's statement that he had gained through surveillance some knowledge of the employees' union activities, no finding that the Employer had created the impression of surveillance could be made on just this one possible inference without additional facts or evidence. Accordingly, I recommend that Objections 4 and 5 be dismissed.

E. Alleged Employer Domination, Support, Assistance and Interference with the IUAW

There was no evidence presented at the hearing that would establish any Employer domination, support, assistance, or interference with the IUAW. The Intervenor subpoenaed all the financial records of the IUAW. They were admitted into evidence and there is no indication that anyone other than farmworkers contributed to the IUAW.

For a period of two weeks before the election UFW organizers visited workers in the fields and talked to them about the UFW and the election without any interference by the Employer. The IUAW organizers also visited the employees on the Employer's premises and talked to the employees without any interference or assistance from the Employer. The Employer did not take any position with respect to which union it favored or whether its employees should have any union representation at all.

The Intervenor alleged that the IUAW president, Oscar Gonzales, "associated" with Louis Delfino Jr. in full view of the employees. During the election campaign, Gonzales did converse with Louis Delfino Jr. in the presence of workers. Gonzales asked Delfino whether he could take some artichokes for himself. The next day, two workers asked Gonzales when he returned to the fields why he was conversing with Louis Delfino Jr. Gonzales

replied that he only asked Delfino for some artichokes. This casual conversation about artichokes hardly amounts to "association" with a member of management.

In its Petition to Set Aside the Election, the UFW listed the following alleged facts as evidence of collusion between the Employer and the IUAW:

1. The Employer selected employees to serve as observers for the IUAW in the election.

2. At the pre-election conference, the Employer and the IUAW openly consulted each other and evidenced by their conduct that they represented the same interests.

3. During the election campaign in 1978, the Employer's agents and supervisors instructed employees to vote for the IUAW rather than for "no union" so as not to split the vote against the UFW.

4. In the election not a single vote was cast for "no union", a fact which clearly indicates that the Employer channeled its support to the IUAW.

However the UFW did not present any evidence to support the first three allegations.

As to the fourth allegation, more is needed than just the voting results to prove that the Employer channeled its support to the IUAW. The UFW failed to present any probative evidence on this point.

For all reasons cited above, I find that the Employer did not dominate, support, assist or interfere with the IUAW and therefore recommend that this objection be dismissed.

F. The Status of the IUAW as a Labor Organization

The intervenor contends that the IUAW is not a bona-fide labor organization and therefore not eligible for certification in this election. For this reason, according to the UFW, the election should be set aside.

The record establishes that the IUAW was founded by Oscar Gonzales and Martha Cano in January 1977. The officers are President Oscar Gonzales, First Vice-President Martha Cano, Secretary-Treasurer Alberto Muratallo, 4 additional vice-presidents and two trustees.

There are approximately 100 farmworker-members who make periodic contributions to the organization. The members select the officers, with final approval by President Oscar Gonzales. The officers meet together an average of once a month to discuss the activities of the organization. Informal meetings are held weekly, or more often, with the members, present and participating. They also hold informal meetings weekly, or more often, with members, and discuss the organizing activities of the officers and the members.

The IUAW has participated in 8 to 9 ALRB elections and has won and been certified the exclusive bargaining agent by the Board in four.^{5/} Shortly before the hearing in the instant case, it signed its first collective bargaining agreement with an employer (Let-Us-Pak). The farmworkers covered by this agreement were to become dues-paying members of the IUAW in September and at that time dues would be deducted from their checks by the employer and paid to the IUAW.

5/ C & V Farms, Carl Dobler & Sons, Ed Silva Harvesting Co., Let-Us-Pak.

The language in the ALRB defining a labor organization is the following:

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists, in whole or in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or condition of work for agricultural employees". ALRA Section 140.4(f)

I find that the IUAW, is an organization in which employees participate and which exists for the purpose of dealing with employers concerning employees' wages, hours, and other terms and conditions of employment. Accordingly, I recommend that Intervenor's objection in this regard be dismissed.

G. Further Arguments by the UFW


The UFW presented evidence that in March 1977, Louis Delfino Sr. gave a speech to the assembled employees in which he made threats of reprisal and promises of benefits. The UFW also adduced evidence that in the Spring of 1977 the Employer reassigned employee Refugio Anguiano from his job as an irrigator to other work because of his union activities. The UFW contends that in May 1977 when a supervisor queried employee Ignacio Lopez about his union activity it was an unlawful interrogation and when the same supervisor stated to him that if the UFW came in, workers vacationing in Mexico would lose their seniority it was a threat of changed conditions should the UFW be chosen as the workers' representative. However none of these acts or statements was alleged as objectionable conduct, they occurred 10 to 12 months before the March 1978 election, and the UFW presented no proof

that the incidents affected or tended to affect the election. Moreover, the Notices to Employees posted by the Employer in July 1977 pursuant to a Board Settlement Agreement served to remedy any Section 1153 (a) acts and statements of the Employer which occurred prior to that date.

RECOMMENDATION

Based on the findings of fact, analysis and conclusions herein, I recommend that all of the UFW¹'s objections be dismissed and that the Independent Union of Agricultural Workers be certified as the exclusive collective bargaining representative of all the agricultural employees of the Employer.

DATED: January 25, 1979


ARIE SCHOORL
Administrative Law Officer